

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

ANTONIO VITOLO and JAKE’S BAR AND
GRILL, LLC,

Plaintiffs,

v.

ISABELLA CASILLAS GUZMAN,

Defendant.

Case No. 3:21-cv-176-TRM-DCP

DECLARATION OF JOHN A. MILLER

I, JOHN A. MILLER, hereby declare as follows:

1. I have worked at the United States Small Business Administration (“SBA”) for over twenty years. I currently hold the position of Deputy Associate Administrator for Capital Access. The Office of Capital Access is responsible for the operation development of policy for the SBA’s business loan programs authorized under the Small Business Act and the Restaurant Revitalization Fund (“RRF”) program authorized under the American Rescue Plan Act (“ARPA”), among others. I am the highest-ranking career official in the Office of Capital Access and am knowledgeable about the RRF program.

2. I make this declaration based on my personal knowledge, and information provided to me in the course of performing my duties and responsibilities as the Deputy Associate Administrator for Capital Access.

Restaurant Revitalization Fund Program Background and Priority Period

3. The RRF was enacted as part of the American Rescue Plan Act (“ARPA”), which Congress passed into law on March 11, 2021. *See* American Rescue Plan Act, Pub. L. No. 117-2 (2021).

The RRF is codified in Section 5003 of ARPA. *Id.*

4. Congress allocated \$28.6 billion for RRF grants. *See* ARPA § 5003(b)(2)(B). Of this sum, \$5 billion was set aside specifically for eligible entities with gross receipts of not more than \$500,000 for the year 2019. *Id.* § 5003(b)(2)(B)(i)(I) (“Set Aside Fund”).

5. Subject only to the prioritization period, ARPA requires that SBA “award grants to eligible entities in the order in which applications are received by the [agency].” ARPA § 5003(c)(1).

6. The priority period provision required that “[d]uring the initial 21-day period in which [SBA] awards grants under this sub-section, the [SBA] shall prioritize awarding grants to eligible entities that are small business concerns owned and controlled by women . . . , small business concerns owned by veterans . . . , or socially and economically disadvantaged small business concerns.” ARPA § 5003(c)(3)(A). ARPA incorporates the Small Business Act to define these terms. *See generally* 15 U.S.C. §§ 632, 637.

7. SBA began processing and awarding grants on May 3, 2021, and accordingly the 21-day priority period began that day and ended on May 24, 2021.

SBA’s Application Processing and Expiration of the Priority Period

8. During the application process, applicants were asked if they qualify as small business concerns owned by women, veterans, or socially and economically disadvantaged individuals. *See* RRF Program Guide at 15-16.¹ Applicants were asked to self-certify whether they meet the requirements, discussed above, for prioritization. *Id.*

9. The RRF Program Guide anticipated that processing individual applications would take approximately 14 days per application.

¹ The RRF Program Guide is available at https://www.sba.gov/sites/default/files/2021-04/Restaurant%20Revitalization%20Fund%20Program%20Guide%20as%20of%204.28.21-508_0.pdf

10. Applications are not all processed at the same rate, as some applications may be more complicated than others and take longer to review. Accordingly, a complicated, earlier-filed application may not be approved and paid out until after a later-filed, but simpler, application. But the actual order in which processing an application begins is determined by the order in which they were received, subject only to the priority period rules.

11. SBA's processing guidelines require applications seeking more than \$360,000 in funds to undergo a more extensive review. Specifically, processing these larger requests requires Form 4506-T verification of the applicant's tax returns from the IRS, which potentially takes as long as 8 business days. SBA adopted this rule as a program decision to manage risk and protect against waste, fraud, and abuse.

12. Between May 3 and May 24, 2021, SBA held applications from otherwise eligible entities that did not self-certify as women-owned, veteran-owned, or as owned by socially and economically disadvantaged individuals, but retained their place in the processing queue based on the order in which the application was filed. During this 21-day time period, SBA initiated the processing of applications self-certified as qualifying for prioritization based on the order in which they were filed.

13. On May 25, 2021, SBA began initiating the processing of all non-priority applications from applicants with FY 2019 gross revenues less than \$50,000.

14. On May 27, 2021, SBA began initiating the processing of non-priority applications. Accordingly, SBA has already commenced processing non-priority applications, including the additional Plaintiffs' applications, in a sequential order based on its ordinary review practices.

15. SBA is not currently processing any priority applications. SBA will only resume processing these applications once it completes processing for all previously filed non-priority

applications, and only then if the RRF is not first exhausted.

16. The final priority applications funded by SBA were booked into SBA's E-Tran system for disbursement of funds by Treasury on the afternoon of May 27, 2021 at approximately 3:27pm ET. This group of approximately 2,002 priority applicants had previously been approved prior to the time SBA stopped further processing of priority applications on May 26, 2021 but were returned due technical errors. The funds for these applicants were disbursed by Treasury on the morning of May 28, 2021.

17. On May 29, 2021, SBA approved approximately 17,231 non-priority applications for grants of less than \$360,000.

SBA's Processing of Jake's Bar and Grill LLC's Application

18. Plaintiff Jake's Bar and Grill LLC applied for an RRF grant on May 3, 2021.

19. Because of the changes undertaken by SBA after May 24, 2021, Jake's Bar and Grill LLC had its RRF application approved on May 25, 2021 at 9:34 a.m. ET. SBA could not fund its application at that time, however, because the applicant's name did not match the name on the bank account provided in the application.

20. Nonetheless, after clarification as to ownership of the bank account, SBA disbursed \$104,590.20 RRF funds to Jake's Bar and Grill LLC on June 1, 2021 at 10:30 a.m. ET. This disbursement satisfies the full claims of Plaintiffs' Jake's Bar and Grill LLC and Antonio Vitolo.

21. These funds should appear in plaintiffs' designated bank account in the next 2 to 3 business days after a normal ACH transfer process and the deposition of such funds in their accounts by their banking institutions.

SBA's Processing of the Additional Plaintiffs' Applications

22. Plaintiff Byron Sackett submitted an application seeking a \$407,109.67 grant for

Homesteads Management, LLC, on May 3, 2021. SBA has initiated processing and consideration of the application.

23. Plaintiff Kevin Pearson submitted an application seeking a \$153,903.44 grant for S & K Soup Co. on May 3, 2021. SBA has initiated processing and consideration of the application.

24. Plaintiff Alfred Castiglioni submitted applications seeking (1) a \$179,907.00 grant for The 579 LLC, (2) a \$596,820.00 grant for Chardonnays Inc., and (3) a \$676,449.00 grant for Zinfandel LLC on May 3, 2021. SBA has initiated processing and consideration of the applications.

25. Plaintiff Denis Flanagan submitted an application seeking a \$1,858,531.44 grant for 3Kad LLC on May 3, 2021. SBA has initiated processing and consideration of the application.

26. As previously stated, the RRF applications identified in paragraphs 22-25 are under consideration and review.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 3rd day of June, 2021 in Washington, DC.

John A. Miller
Deputy Associate Administrator for Capital Access
U.S. Small Business Administration